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## DEPARTMENT OF NATURAL RESOURCES

ROLAND HARMES, Director

Region I Headquarters

1990 US-41 South, Marquette, MI 49855

October 28, 1994

OCT 31 1994

Jack R  
FBI  
D

Mr. Dennis Bittner  
Bittner Engineering, Inc.  
113 South 10th Street  
Escanaba, Michigan 49829

Dear Mr. Bittner:

SUBJECT: Advisory Analysis, Proposed Manistique Papers, Incorporated Landfill,  
Hiawatha Township, Schoolcraft County

In accordance with your request, the requirements of Section 11(1), and Rule 299.4901 of Act 641, P.A. 641, as amended, (Act 641) an advisory analysis has been conducted for Manistique Paper Incorporated's (MPI) proposed industrial waste landfill in Sections 25 and 36 of Hiawatha Township (T42N, R16W), Schoolcraft County. A review of the available information for this site has been completed, and a site inspection was performed on October 20, 1994. The following comments will complete the advisory analysis.

County Solid Waste Management Plan

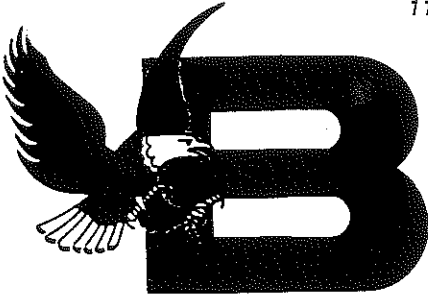
You will need to demonstrate consistency with the Schoolcraft County Solid Waste Management Plan prior to applying for a construction permit. Rule 299.4902(2) of Act 641 discusses the requirements for such a demonstration.

Construction Permit Application

Rule 299.4902 of Act 641 discusses the required elements of an administratively complete construction permit application. The application shall include, but is not limited to: a completed construction permit application form, construction permit application fees as specified by the act, an environmental assessment that contains the information specified in Rule 299.4903, a hydrogeological report that is in compliance with Rule 299.4904, a hydrogeological monitoring plan that is in compliance with Rule 299.4905, topographic maps in compliance with Rule 299.4909, engineering plans and engineering reports as specified in Rule 299.4910, operations plans as specified in Rule 299.4911, the construction quality assurance plans specified in Rule 299.4916, and a demonstration of consistency with the county solid waste management plan, as discussed above.

# BITTNER ENGINEERING, INC.

113 SOUTH 10TH STREET, ESCANABA, MICHIGAN 49829 • 906-789-1511



October 17, 1994

RECEIVED

OCT 19 1994

Marquette Dist. W.M.D

Ms. Margie Ring  
Environmental Engineer  
Waste Management Division  
Michigan Department of Natural Resources  
1990 U.S. 41 South  
Marquette, MI 49855

RE: Manistique Papers, Inc.  
Request for Advisory Analysis

Dear Ms. Ring:

On behalf of Manistique Papers, Inc., we hereby request an Advisory Analysis for the siting of a new Act 641 landfill as discussed during our meeting of October 11, 1994. The area under consideration is located in sections 25 and 36 of Hiawatha Township (T42N, R16W) and includes approximately 400 acres. While permitting will be requested for a smaller area, we feel it is important to evaluate the larger acreage initially due to possible land acquisition problems and constructability issues.

Attached are copies of a location map, a land ownership map, and a brief narrative description of the area.

We look forward to joining you on October 20 to perform a preliminary site evaluation of the area.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Dennis B. Bittner, P.E.  
Project Manager

Enclosure  
DBB/jr

cc: Frank Opolka, Ron Raisanen, Jack Rydquist, Rob Schmeling, - MDNR  
Leif Christensen, Tom Arnold, Jim Cook, Jason Panek - Manistique Papers, Inc.  
Claudia Rast - Dickinson, Wright, Moon, VanDusen and Freeman

DENNIS B. BITTNER, P.E., PRESIDENT

**MANISTIQUE PAPERS, INC.**  
**PROPOSED LANDFILL SITE EVALUATION**

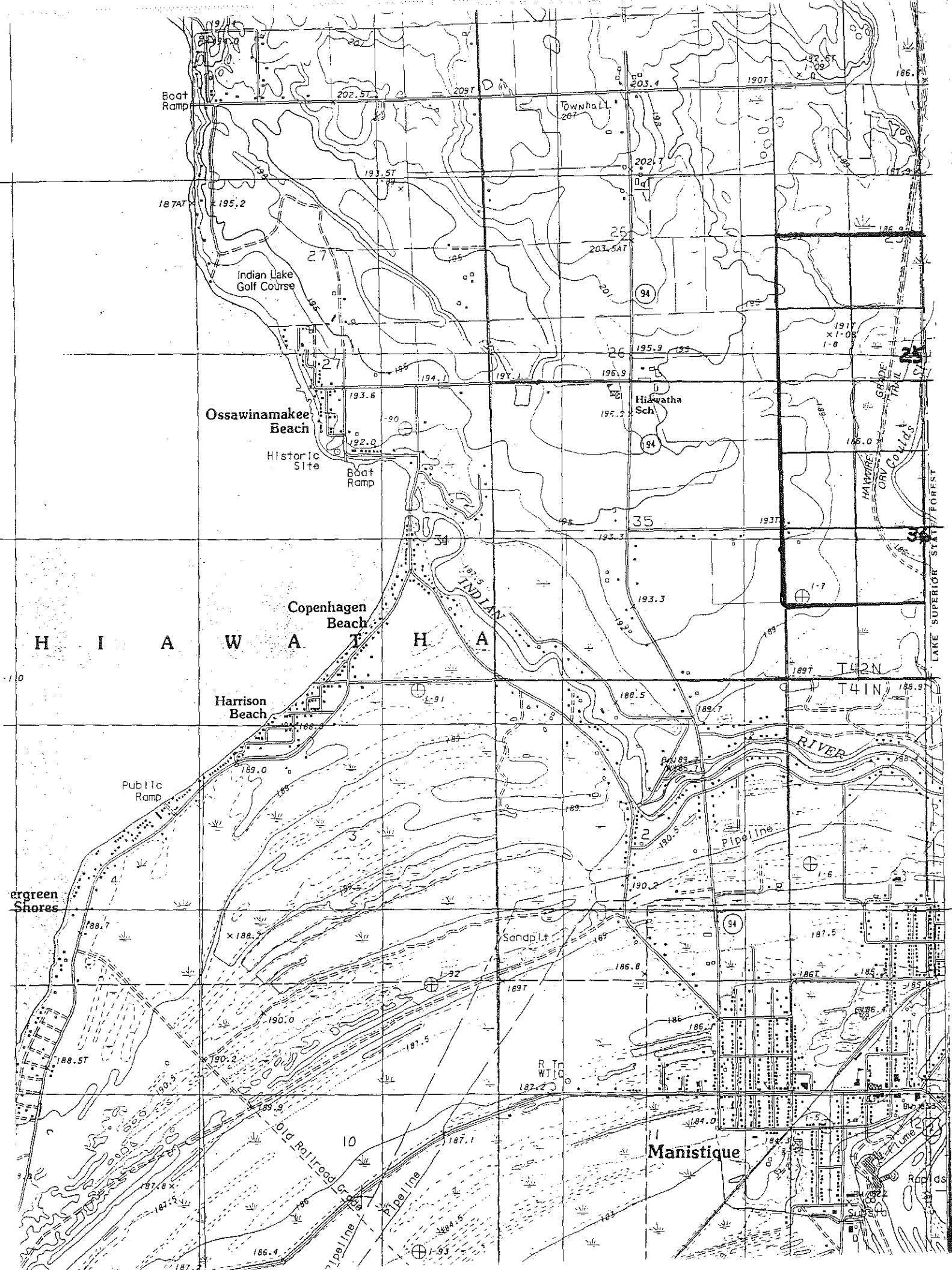
An evaluation for a potential Act 641 landfill site north of the current RMA of Manistique Papers, Inc. (MPI) covers an area of 10 contiguous forty acre parcels under various ownership. (Plat map attached). The west boundary of this 400 acre area lies 1/2 mile east of State Highway M-94 in parts of sections 25 and 36, Hiawatha Township, T.42N.-R.16W., Schoolcraft County. U.S. Geological Survey Topographic Maps, which are included, indicate these properties may have the desired characteristics for permitting and construction of a landfill under Act 641. Surface elevations from south to north along the east edge of the described property is approximately 186 meters (610 ft.) above Mean Sea Level (MSL). These elevations rise to about 192 meters (630 ft.) above M.S.L. along the western boundary.

There are no creeks, rivers, or lakes within the delineated boundaries. A site visit will be necessary to determine if wetlands exist. Two pipe lines run east and west about 3/4 mile south of the southern boundary. The nearest airport is approximately 3 miles southeast of the property. There are several homes along M-94 which would be approximately 2,500 ft. from the west boundary of the described property. There are also residences along the southern fringe of the extreme southern forty acre parcels.

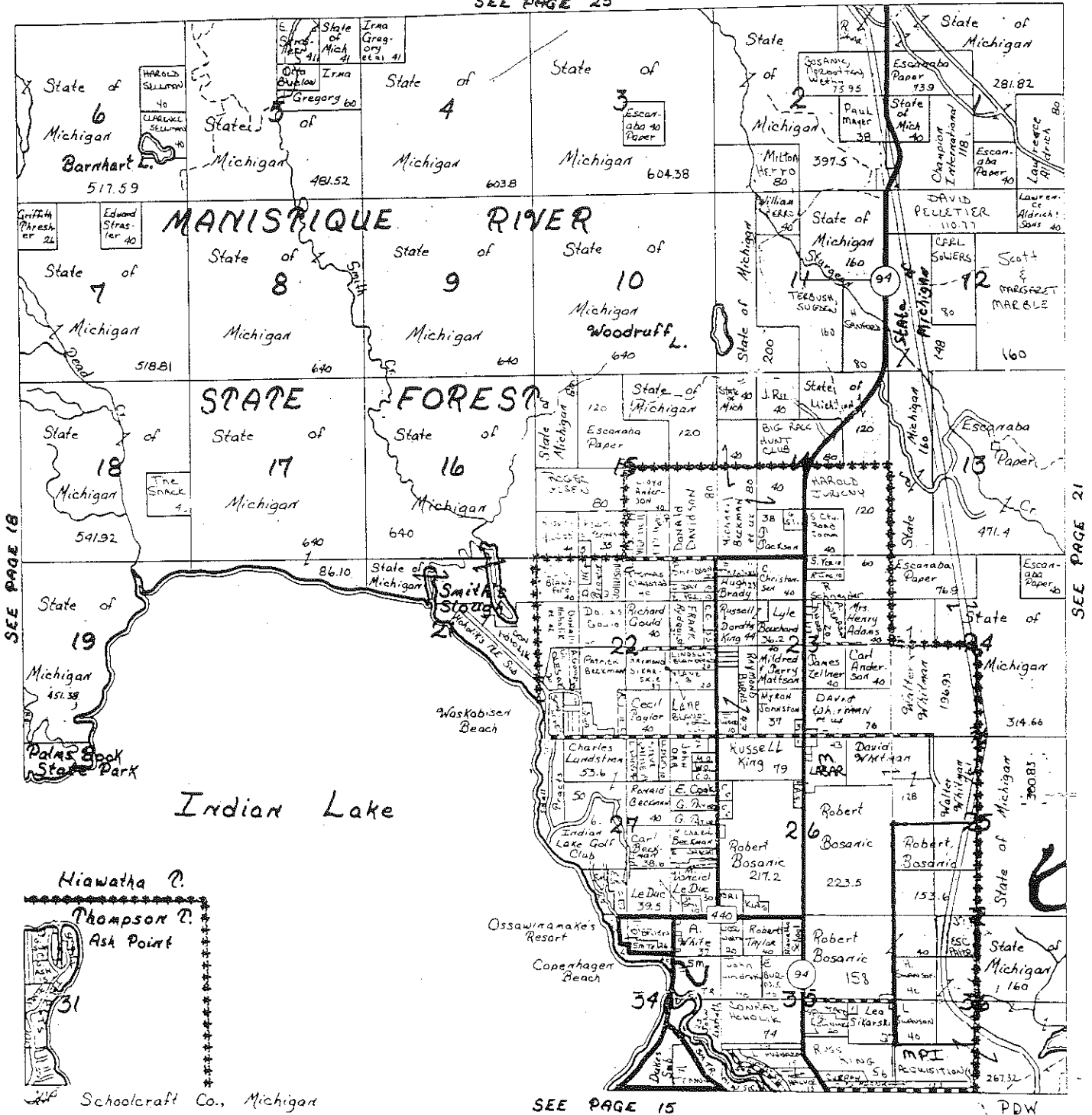
Bedrock occurs from surface to about 20 feet below ground surface (taken from limited observations recorded in publication "Reconnaissance of the Ground-Water Resources of Schoolcraft County, Michigan.") Water level below ground surface varies from several feet to 50 feet.

The surface geology map indicates shallow bedrock for a portion of the area with swamp deposits along the eastern boundary. For areas with shallow bedrock, borrow for landfill construction would have to be hauled in from off site.

Access is excellent for year-around operation. Electric power is readily available.



SEE PAGE 25



## AL'S SAND & GRAVEL

Allen Desjarden



- |                             |                   |
|-----------------------------|-------------------|
| MASON SAND (10)             | (11) CEMENT SAND  |
| PIT RUN GRAVEL (14)         | (9) FILL DIRT     |
| LARGE STONE (11)            | (12) SEPTIC STONE |
| MANURE (6)                  | (8) TOP SOIL      |
| (14) CRUSHED GRAVEL PIT RUN |                   |

Rte. 1, Box 1371  
Manistique, Michigan 49854

\*\*LOCATED: At Marblehead Pt on East US-2

NATURAL RESOURCES  
COMMISSION

JERRY C. BARTNIK  
RY DEVUYST  
EISELE  
S HILL  
D HOLLI  
JOEY M. SPANO  
JORDAN B. TATTER

STATE OF MICHIGAN



JOHN ENGLER, Governor

DEPARTMENT OF NATURAL RESOURCES

Stevens T. Mason Building, P.O. Box 30273, Lansing, MI 48909

ROLAND HARMES, Director

November 18, 1993

File in  
Manistique

Ronald L. Smith  
Parry, Murray, Ward and Cannon, P.C.  
1270 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111

Dear Mr. Smith:

I am responding to your request of November 10, 1993 for information from the files of the Michigan Department of Natural Resources, Surface Water Quality Division, Planning and Special Programs Section relating to the landfill owned by Manistique Papers, Inc. The Surface Water Quality Division does not have authority for licensing or permitting landfill sites, so any information in our section files about landfills is incidental.


The two documents in our files related to the Manistique Papers' landfill site are enclosed. The landfill is mentioned in passing on pages 52 and 53 of the Remedial Action Plan (RAP) for the Manistique River. The landfill is not covered in any detail in this document because it is several miles from the Manistique River Area of Concern for which the RAP was written. The other document is a 1980 site Residuals Management Plan prepared by Manistique Papers.

You also requested names and addresses of other Michigan Department of Natural Resources divisions that may have information relating to the landfill. For information about licensing, regulation and testing of the landfill, contact:

Michigan Department of Natural Resources  
Waste Management Division  
Marquette Regional Office  
1990 U.S. 41 South  
Marquette, Michigan 49855

A copy of your letter requesting information has been forwarded to the Waste Management Division. If I can be of further assistance, please do not hesitate to call or write.

Sincerely,

  
Roger Eberhardt, Ph.D.  
Planning and Special Programs Section  
Surface Water Quality Division  
517-335-1119

Enclosures

cc: Ms. Diana Klemans, SWQD  
Ms. Liz Hinton, SWQD

From: CLARKC --DNRDC  
To: HARRINGS--DNRDC

Date and time 08/05/93 09:51:20

f: CLIFTON CLARK  
MARQUETTE DISTRICT  
ENVIRONMENTAL RESPONSE DIVISION

Subject: Manistique Papers, Inc.

906/228-6561, PROFS: CLARKC

\*\*\* Forwarding note from CLARKC --DNRDC 08/05/93 09:51 \*\*\*

To: RYDQUISJ--DNRDC

FROM: CLIFTON CLARK  
MARQUETTE DISTRICT  
ENVIRONMENTAL RESPONSE DIVISION

SUBJECT: Manistique Papers, Inc.

I've read your letter of July 19, 1993 to Leif Christensen, and offer one comment/clarification:

According to previous Del Rector "reorgaization memos" (circa July 1987) and my current understanding, resolution of a contaminated site falls in the court of the permitting division, if the facility is regulated under permit or license. I understand that a previous decision was made between SWQD and WMD to allow the disposal of mill wastes under the authority of a Program for Effective Residuals Management rather than an Act 641 Solid Waste Disposal Area license.

Page 2 of the letter suggests that Leif "continue working with ERD..." ; to-date, they have not been working with ERD, and I believe that it is appropriate that they continue working with either SWQD or WMD.

ERD would, of course, be completely willing to assist either division in interpreting Act 307, and could provide assistance in reviewing work plans and reports, as necessary.

906/228-6561, PROFS: CLARKC



JOHN ENGLER, Governor

DEPARTMENT OF NATURAL RESOURCES

ROLAND HARMES, Director

REGION I HEADQUARTERS

1990 U.S. 41 South

Marquette, Michigan 49855-9131

NATURAL RESOURCES  
COMMISSION

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JORDAN B. TATTER

March 3, 1993

Mr. Leif Christensen  
General Manager  
Manistique Papers, Inc.  
453 S. Mackinac Avenue  
Manistique, Michigan 49854

SUBJECT: NPDES MI0003166

Dear Mr. Christensen:

On April 21, 1992, I wrote Manistique Papers, Inc. of my intent to not approve Manistique Papers' Program For Effective Residuals Management (PERM). My basis for disapproval is the fact that Manistique Papers' landfill is not licensed, nor does any language in Manistique Papers' National Pollutant Discharge Elimination System (NPDES) permit #MI0003166 specifically approve or require the use of the landfill site for disposal of residuals resulting from the treatment of wastewater. The permit merely sets forth the requirement for submittal of a PERM for approval. The NPDES permit required PERM only regulates sludge or residuals from the wastewater treatment process. It does not regulate any other wastes generated by Manistique Papers, Inc. Such wastes are clearly regulated under Act 641.

Following your meeting on April 20, 1992 with Mr. Robert Schmeling, Carl Smith and Frank Opolka, Mr. Schmeling confirmed Waste Management's position via letter to you, in which he stated that agreement had been reached whereby Manistique Papers would submit a report containing the data necessary to characterize Manistique Papers' waste. Waste Management Division would then make a determination whether or not the existing landfill is appropriate for Manistique Papers' waste. A report containing that data was to be submitted by June 10, 1992. It is our understanding the report has yet to be submitted.

The Surface Water Quality Division agreed to delay a decision on the PERM providing the waste characterization report was submitted on a timely basis. It has now been over eight months since the report was due.

It remains our intent to have Manistique Papers' landfill regulated under Act 641 while the PERM approval will remain with the NPDES permit.



Mr. Leif Christensen

- 2 -

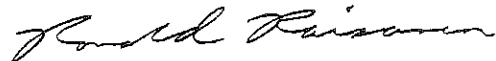
March 3, 1993

A PERM that specifies disposal of wastewater treatment residuals at an unapproved landfill cannot be approved.

At this time, the Environmental Protection Agency's NPDES tracking system shows that the annual PERM update has not been approved. Failure to adequately address this situation in a timely fashion could result in federal or state action on this issue. We, therefore, advise you to resolve the landfill licensing problem as quickly as possible.

If you have any questions, feel free to contact me at any time.

Sincerely,



Jack Rydquist  
Regional Supervisor  
by Ronald Raisanen  
Environmental Quality Analyst  
Surface Water Quality Division  
906-228-6561

dmk

c: Mr. Frank Opolka, MDNR  
Mr. Rob Schmeling, MDNR  
Ms. Patty Brandt, MDNR

LAW OFFICES  
HONIGMAN MILLER SCHWARTZ AND COHN  
2290 FIRST NATIONAL BUILDING  
DETROIT, MICHIGAN 48226

TELECOPIER (313) 962-0176  
TELEX 235705

SEPH M. POLITO  
FAX DIAL NUMBER  
(313) 256-7532

September 15, 1988

MICHIGAN NATIONAL TOWER  
SUITE 1400  
LANSING, MICHIGAN 48933  
TELEPHONE (517) 484-8282

RECEIVED SEP 21 1988

1655 PALM BEACH LAKES BOULEVARD  
SUITE 600  
WEST PALM BEACH, FLORIDA 33401  
TELEPHONE (407) 683-3400

2250 GLADES ROAD  
BOCA RATON, FLORIDA 33431  
TELEPHONE (407) 395-7505

Mr. Frank Opolka  
Deputy Director, Region I  
Michigan Department of Natural Resources  
1990 U.S. 41 South  
Marquette, Michigan 49601

Re: Manistique Papers, Inc.'s Residuals Management Area

Dear Mr. Opolka:

This letter is a follow-up to our meeting on September 1, 1988, regarding the above matter. At that meeting, you agreed to obtain an informal response to Manistique Papers' contention that Manistique Papers' residuals management area is not subject to regulation under the Michigan Solid Waste Management Act, 1978 PA 641, MCLA §§299.401 et seq ("Act 641"). In that regard, enclosed is a memorandum of law regarding application of Act 641 to Manistique Papers' residuals management area, located 1 1/2 miles north of the City of Manistique in Schoolcraft County, Michigan.

The enclosed memorandum explains why Manistique Papers is not required to obtain an Act 641 construction permit or operating license for its residuals management area. Simply put, the sludge does not constitute "solid waste" under Act 641 because Section 7(1)(j) of Act 641 excludes from the statutory definition of "solid waste" those materials which are "other wastes regulated by statute." M.C.L.A. §299.407(1)(j). Manistique Papers' sludge falls within this exclusion because disposal of the sludge is regulated by Manistique Papers' National Pollutant Discharge Elimination System ("NPDES") permit issued through the Michigan Department of Natural Resources ("MDNR") pursuant to the federal Clean Water Act, 33 U.S.C. §§1251 et seq, and the Michigan Water Resources Commission Act, M.C.L.A. §§ 323.1 et seq.

The NPDES permit requires Manistique Papers to dispose of the sludge in a manner which prevents unlawful pollution. A hydrogeological study requested by MDNR and performed in accordance with a work study plan approved by MDNR has confirmed that the residuals management area does not adversely affect groundwater. Under these circumstances, requiring Manistique Papers to obtain an Act 641 license would be both legally impermissible and unnecessary to protect the environment.

Mr. Frank Opolka  
September 15, 1988  
Page 2

I truly appreciated your furnishing Manistique Papers with an opportunity to explain its position on this matter. Please be advised that this submission by Manistique Papers is not and should not be construed to be a request for a declaratory ruling.

I would also like to summarize my understanding with respect to some of the additional points we discussed at our September 1st meeting:

1. You agreed to determine when Manistique Papers would be receiving a response to its January 8, 1988, letter commenting on the listing of the residuals management area on the Act 307 list. Manistique Papers has been waiting almost 10 months for a response from Steve Harrington of the Site Assessment Unit in Lansing.
2. Bob Schmeling was to check with Joan Peck to determine whether, based upon the information Manistique Papers has provided, the sludge could be classified as inert, inert for specific disposal, or as Type III material under Act 641. As you will recall from our meeting, if the material qualifies as inert or inert for specific disposal, neither an Act 641 construction permit nor an operating license would be required for Manistique Papers' residuals management area.
3. If the material is classified as Type III material, you were to determine whether the requirement for four feet of vertical isolation distance could be met by considering the existing sludge deposits in computing the isolation distance or relying on the existing site borings, which did not indicate any water at all. I pointed out to you what I understood to be precedents for using the existing sludge deposits in computing the four feet isolation distance, i.e., the Georgia-Pacific and Allied Paper disposal areas in the Kalamazoo vicinity.
4. If the four feet isolation distance requirement cannot be resolved by either of the approaches outlined in paragraph 3, above, you are to advise on the possibility of MDNR granting Manistique Papers a variance from the Act 641 isolation distance requirement under Act 641 Rule 108(6).

Since our meeting, I have had an opportunity to look at another issue that we touched upon at our meeting. As you may recall, Dave Dennis indicated that if the sludge was classified as Type III, an Act 641 construction permit and operating license would be required. I have reviewed Act 641 and its

Mr. Frank Opolka  
September 15, 1988  
Page 3

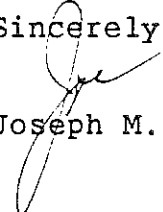
regulations, and my view is that because Manistique Papers' residuals management area was in use prior to January 11, 1979, the effective date of Act 641, a construction permit would not be required, and only an operating license would be in this event. This is so because a construction permit is required under Section 10(1) of Act 641 in order to "establish a disposal area." Section 11(1) of Act 641 indicates that a construction permit is required for a "new disposal area," which the Act 641 rules interpret as meaning that construction permits are required for "new facilities." See, MCLA §299.411(1) and R 299.4301(2). A "new facility" is defined as "a disposal area that is proposed for construction or an expansion, enlargement or alteration of an existing disposal area beyond the horizontal and vertical boundaries indicated in the construction permit or on engineering plans approved before January 11, 1979." R 299.4104(1)(c). A construction permit for the residuals management area is not required because it was established before January 11, 1979, and is not a "new facility" as defined in R 299.4104(1)(c). I would appreciate your response to this issue as well.

Frank, I thought our September 1st meeting was particularly helpful. I do not think the situation we face here is of any environmental concern. I think the answer here is to find the correct procedure for continued authorization of a practice which has continued with the approval of MDNR for 15 years or more. As the enclosed memo indicates, I think that the correct legal result is that the residuals management area should continue to be regulated under Manistique Papers' NPDES permit. This is certainly a case where the old adage: "If it ain't broke, don't fix it" should apply.

I look forward to hearing from you on the foregoing matters.

Best regards.

Sincerely,

  
Joseph M. Polito

JMP/dd

cc: Mr. Dave M. Dennis  
Mr. Leif Christensen  
Mr. Dennis Bittner

## MEMORANDUM

TO: Frank Opolka  
Deputy Director, Region I  
Michigan Department of Natural Resources

FROM: Joseph M. Polito

RE: Application of Act 641 to Manistique Papers, Inc.  
Residuals Management Area

DATE: September 15, 1988

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### I. STATEMENT OF FACTS

Manistique Papers, Inc. ("Manistique Papers") operates a residuals management area located approximately 1-1/2 miles north of the City of Manistique in Schoolcraft County, Michigan. More than 99 percent of the material disposed of at the site is dewatered sludge from a wastewater treatment plant operated in connection with Manistique Papers' paper mill. The remainder is miscellaneous fiber waste incidental to the paper manufacturing process, such as cores, crating material and scrap paper.

Operation of the residuals management area has been regulated under National Pollutant Discharge Elimination System ("NPDES") permits issued to Manistique Papers through the Michigan Department of Natural Resources ("MDNR"), pursuant to the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., and P.A. 1929, No. 245, as amended, the Michigan Water Resources Commission Act, M.C.L.A. §§ 323.1 et seq. ("Act 245"). Manistique Papers' first NPDES permit, issued in 1976, contained a standard condition requiring that solids, sludges, filter backwash or other pollutants removed from or resulting from treatment or control of wastewaters be disposed of "in a manner such as to prevent any pollutant from such materials from entering navigable waters." 1976 Permit, Part II, ¶ 8 (attached hereto as Exhibit A). No other provisions in this permit pertained to sludge disposal.

A second NPDES permit, issued to Manistique Papers on December 1, 1980, required solids, sludges or residuals resulting from wastewater treatment to be disposed of in accordance with a Residuals Management Plan ("RMP"), which had to be submitted to and approved by the MDNR. 1980 Permit, Part

I, ¶ 6 (attached hereto as Exhibit B). The 1980 Permit specified that the RMP had to document the characteristics of the residuals in the sludges and provide a method for disposal "which will not result in unlawful pollution of the air, surface waters or ground waters of the state nor create unlawful nuisance conditions." *Id.* The permit further provided that "the disposal of solids, sludges or residuals shall be in accordance with Act 641 . . . ." *Id.* Act 641 is the popular name for P.A. 1978, No. 641, as amended, the Michigan Solid Waste Management Act, M.C.L.A. §§ 299.401 et seq.

The 1980 Permit also contained a standard condition pertaining to wastewater sludges similar to the condition found in the 1976 Permit. The 1980 Permit provided that "[s]olids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters, or the entry of toxic or harmful contaminants thereof onto the groundwaters in concentrations or amounts detrimental to the groundwater resource." 1980 Permit, Part II.A., ¶ 9.

Manistique Papers submitted an RMP to MDNR as required by the 1980 Permit, which was approved by MDNR on an interim basis on April 22, 1981 (excerpts attached hereto as Exhibit C). The RMP described the location and extent of the residuals management area, the materials contributed to the site, the sludge characteristics, the topography and hydrogeologic aspects of the site, a study of the effect of sludge on plant growth, and the present and future method of site operation. The RMP included the following points: Manistique Papers adds polymers in the filtration stage in order to reduce the water content of the sludge to a minimum; Manistique Papers also has purchased property adjoining the residuals management area to assure its isolation from residential areas, the nearest of which is about one mile away; and the sludge has a high clay content and thus a natural tendency to seal the soil against infiltration, especially since Manistique Papers' piling technique minimizes lateral distribution of the sludge in the residuals management area. The RMP concluded that any outflow from the residuals management area would not be detectable beyond the boundaries of Manistique Papers' property.

Manistique Papers' current NPDES permit, issued on August 22, 1985, contains a special condition requiring a Program for Effective Residuals Management ("PERM"), which incorporates the RMP as the approved PERM. 1985 Permit, Part I, ¶ 11 (attached hereto as Exhibit D). The special condition requires Manistique Papers to review and update the PERM, as need be, on an annual basis. The 1985 Permit provides:

Substantial changes in the existing approved PERM requiring update notification shall include, but not be limited to: a change in disposal method or site; a change in treatment method; a change in storage method or site; a change in monitoring parameters or monitoring frequency; an increase in application rates; or a change in residuals quantity or characteristics.

Finally, the special condition provides that "[s]ubsequent to the approval of the PERM update, disposal of residuals resulting from treatment of wastewater shall be in accordance with the existing approved PERM." Notification of updates of the PERM must be submitted on or before July of each year. 1985 Permit, Part I.C., ¶ 7. The 1985 Permit also contains the same standard condition pertaining to wastewater sludges and residues found in the 1980 Permit. 1985 Permit, Part II.A., ¶ 11.

On October 1, 1985, MDNR sent to Manistique Papers an application for an Act 641 operating license. The MDNR letter accompanying the application stated that the update of the PERM required under the 1985 NPDES Permit had to include an Act 641 operating license "with a hydrogeological study" of the residuals management area. Manistique Papers retained Bittner Engineering, Inc. to perform the study, which was conducted in accordance with a work study plan approved by MDNR. The study, which was completed in January, 1988 and has been previously furnished to MDNR, demonstrated that the residuals management area does not adversely affect groundwater in the vicinity of the Manistique Papers residuals management area.

## II. ISSUE PRESENTED

Whether Manistique Papers' residuals management area, which is already regulated under Manistique Papers' NPDES Permit, also requires a construction permit and/or an operating license issued pursuant to Act 641.

## III. BRIEF CONCLUSION

Act 641 does not apply to the residuals management area because the materials managed there do not constitute "solid waste" under Act 641. Rather, those materials are "other wastes regulated by statute," which are excluded from the Act 641 definition of "solid waste".

#### IV. ANALYSIS

Section 10(1) of Act 641 states in pertinent part that "a person . . . shall not establish a disposal area without a construction permit" from MDNR. M.C.L.A. §299.410(1) (emphasis supplied). Similarly, Section 13(2) of Act 641 provides in pertinent part that "a person . . . shall not conduct, manage, maintain or operate a disposal area within this state without a license" from MDNR. M.C.L.A. § 299.413(2) (emphasis supplied). A "disposal area" is "a solid waste transfer facility, incinerator, sanitary landfill, processing plant or other solid waste handling or disposal facility utilized in the disposal of solid waste." M.C.L.A. § 299.404(3) (emphasis supplied). Act 641 defines "solid waste" as follows:

(1) "Solid waste" means garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, solid commercial and solid industrial waste, and animal waste. Solid waste does not include the following:

- (a) Human body waste.
- (b) Liquid waste.
- (c) Ferrous or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products.
- (d) Slag or slag products directed to a slag processor or to a reuser of slag or slag products.
- (e) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the director.
- (f) Materials approved for emergency disposal by the director.
- (g) Source separated materials.
- (h) Site separated material.
- (i) Fly ash or any other ash produced from the combustion of coal, when used in the following instances:



(i) With a maximum of 6% of unburned carbon as a component of concrete, grout, mortar, or casting molds.

(ii) With a maximum of 12% unburned carbon passing M.D.O.T. test method MTM 101 when used as a raw material in asphalt for road construction.

(iii) As aggregate, road, or building material which in ultimate use will be stabilized or bonded by cement, limes, or asphalt.

(iv) As a road base or construction fill which is covered with asphalt, concrete, or other material approved by the director and which is placed at least 4 feet above the seasonal groundwater table.

(v) As the sole material in a depository designed to reclaim, develop, or otherwise enhance land, subject to the approval of the director. In evaluating the site, the director shall consider the physical and chemical properties of the ash including leachability, and the engineering of the depository, including, but not limited to, the compaction, control of surface water and groundwater that may threaten to infiltrate the site, and evidence that the depository is designed to prevent water percolation through the material.

(j) Other wastes regulated by statute.

M.C.L.A. § 299.407(1) (emphasis supplied).

Accordingly, an Act 641 construction permit or operating license is required only for areas used for disposal of solid waste, and solid waste does not include "other wastes regulated by statute." Regulations promulgated by MDNR pursuant to Act 641 clarify the scope of the definition of solid waste. Rule 104(2) provides that the term "other waste regulated by

statute" as used in Act 641 "means any waste whose disposal area is regulated by permits issued through the department." Michigan Administrative Code ("MAC") R 299.4104(2).

Manistique Papers' residuals management area is authorized by and regulated under its NPDES Permit issued by MDNR. The 1985 NPDES Permit requires sludge disposal to be in accordance with the PERM. The PERM, which incorporates the RMP required by the 1980 NPDES Permit, governs operations at the residuals management area. Because the residuals management area is regulated by the NPDES permit issued by MDNR, materials handled at the site are not "solid waste," and the site is not a "disposal area" requiring an Act 641 construction permit or operating license.

Application of the Act 641 exclusion for other waste regulated by statute is especially appropriate here. Issuance of an Act 641 construction permit or operating license would simply constitute duplicative and unnecessary regulation. Protection of the groundwater in the vicinity of the Manistique Papers site is already assured by the provisions of the NPDES Permit and by the regulations of the Water Resources Commission protecting groundwater. Those regulations prohibit the discharge into groundwater of any substance that "is, or may become, injurious to the public health, safety, or welfare, or to the domestic, commercial, industrial, agricultural, recreational, or other uses which are being or may be made of the groundwaters." MAC R 323.2206. The Bittner Engineering study has confirmed that Manistique Papers has avoided adversely affecting groundwater quality by complying with its NPDES permit.

In addition, regulation of Manistique Papers' site under the NPDES system is backed up by enforcement sanctions under the Clean Water Act and Act 245 which are even more stringent than those that would apply to violations of Act 641. A person who violates Act 641 is subject to civil fines of no more than \$10,000 per day. M.C.L.A. §299.433(2). Under the Clean Water Act, NPDES permit violators are subject to civil penalties of up to \$25,000 per day. 33 U.S.C. §1319(d). Violators of Act 245 also face civil penalties of up to \$10,000 per day under that statute. M.C.L.A. §323.10(1). Civil penalties for NPDES permit violations may be imposed in either judicial actions brought by the state or federal governments, in federal administrative proceedings, or in a federal lawsuit brought by a private citizen. *Id.*; 33 U.S.C. §§1319(b),(d),(g), 1365. Civil penalties for an Act 641 violation may be sought only in a state court action brought by the Attorney General. Act 641 does not authorize either citizen suits or administratively imposed civil penalties.

Criminal sanctions are also more severe for NPDES violations than for Act 641 violations. Under the Clean Water Act, criminal penalties range up to a \$1,000,000 fine for a corporation, or a \$250,000 fine and 15 years of imprisonment for an individual. 33 U.S.C. §1319(c)(3)(A). The maximum fines and imprisonment are doubled for repeat offenders. Id. In addition, under Act 245, a person who discharges a substance into waters of the state contrary to the provisions of a permit is guilty of a misdemeanor and shall be fined between \$2,500 and \$25,000. M.C.L.A. §323.10(2). An additional fine of \$25,000 for each day on which the unlawful discharge occurred may also be imposed. Id. The per day fine may be increased to \$50,000 for repeat offenders, and the court may also impose probation upon any violator. Id. In contrast, the maximum criminal financial sanction under Act 641 is only a \$1,000 fine per violation and payment of prosecution costs. M.C.L.A. §299.436. Imprisonment may be imposed only if the violator defaults on payment of his fine and the prosecution's costs, and the maximum prison term is just six months. Id.

The MDNR's own prior actions regarding the Manistique Papers residuals management area further bolster the view that an Act 641 license should not be required here. The residuals management area is included in the Schoolcraft County Solid Waste Management Plan ("County Waste Plan"), which MDNR approved on March 22, 1985. The County Waste Plan identifies the site as part of the recommended solid waste management system, and states that it "is authorized under the company's Residuals Management Plan of their NPDES permit." County Waste Plan at III-2, VII-1; see App. A. (The pertinent portions of the County Waste Plan are attached hereto as Exhibit E.) In approving the County Waste Plan, MDNR implicitly approved continued operation of the residuals management area pursuant to the NPDES Permit, rather than under Act 641.

Moreover, in at least two other instances MDNR has determined that disposal of other wastes regulated under other state statutes or licenses is not subject to Act 641 regulation, based on the same reasoning which supports the conclusion that disposal of the Manistique Papers sludge is not subject to Act 641 regulation. First, it is my understanding that MDNR has often determined that an Act 641 construction permit or operating license is not required for the land application of sludge from a municipal wastewater treatment plant, if that disposal is already regulated by an NPDES permit. Second, MDNR has determined that Act 641 does not apply in an analogous situation involving the National Gypsum Company facility in Alpena, Michigan. There, cement kiln dust is disposed of in a limestone quarry. Because the disposal is regulated under P.A. 1970, No. 92, the Reclamation of Mineral

Mining Lands Act, M.C.L.A. §§425.181 et seq., MDNR has determined that the kiln dust is not "solid waste" under Act 641, and that its disposal in the quarry does not require an Act 641 construction permit or operating license. (See letter dated December 15, 1986 from Richard S. Johns to Thomas T. Wheeler, attached hereto as Exhibit F.)

C0972I

Regional Office  
1990 US-41 South  
Marquette, Michigan 49855

October 1, 1985

Mr. Leif Christensen  
President & General Manager  
MANISTIQUE PAPERS, INC.  
P. O. Box 111  
Manistique, MI 49854-0111

Dear Mr. Christensen:

Enclosed is an Act 641 permit application for your solid waste disposal site. As we discussed during our July 2 meeting, your solid waste disposal site must be licensed under Act 641. Your recently issued NPDES permit requires that you update your Program for Effective Residuals Management (PERM) by July of next year. This update must include an Act 641 permit (with a hydrogeological study) for your proposed disposal site and a leachate analysis of your sludge.

I think that a meeting between your staff/consultants and MDNR Marquette Surface/Groundwater staff would be productive at this time. Please let me know when it would be convenient for us to meet.

Sincerely yours,

Steve Casey, P.E.  
Environmental Engineer  
SURFACE WATER QUALITY DIVISION  
Phone: (906) 228-6561

SC:laj  
cc: Jim Cook  
bcc: Robert Schmeling

203 State Office Building  
Escanaba, Michigan 49829  
February 21, 1979

Mr. Leif Christensen  
Vice President-General Manager  
Manistique Pulp and Paper Company  
Manistique, Michigan 49854

Dear Mr. Christensen:

This is in reference to your February 13, 1979 letter and application for solid waste disposal area license. Enclosed are your check for \$25 application fee, surety bond, and a copy of Act 641, P.A. 1978, which repeals Act 87, P.A. 1965, as amended. Please refer to Sections 10, 13, 15 and 19 of the enclosed Act 641 for the application, construction and surety bond fees that will apply to your disposal site.

There have been no rules promulgated under Act 641 at this time. Emergency rules and procedures, as outlined by the new statute by staff, are to be sent to the Governor for signing by the end of this month. As soon as our office receives the new rules and procedures, we will inform your office of the criteria for licensing of your sludge disposal site.

In the interim period, a complete hydrological evaluation of the sludge disposal site should be looked into. A hydrological study is required of all disposal areas to be considered for licensure.

As soon as our office receives the emergency rules, we would like to meet with you and your consulting engineers (hopefully, this will be the first part of March) to discuss the rules and procedures of the new Act. We look forward to working with you. If you have any questions, please contact our office.

Very truly yours,

Earle H. Olsen, R.S.  
Regional Supervisor  
Resource Recovery Division

By: Robert Schmeling II, P.E.  
Sanitary Engineer

encl.

cc: Schoolcraft County Health Department  
F. Kellow

203 State Office Building  
Escanaba, Michigan 49829  
December 27, 1978

Mr. Leif Christensen  
Vice President-General Manager  
Manistique Pulp and Paper Company  
Manistique, Michigan 49854

Dear Mr. Christensen:

This is concerning the status of the planning and design for licensing of Manistique Pulp and Paper Company's sludge disposal site. To date, our office has not received any information for processing nor the results of the testing of the sludge and leachate samples collected by Cory Laboratory from your office or engineer.

We would like to be informed of the company's engineering and design progress and implementation schedule so that our office can prepare a Consent Order reflecting the proposed implementation schedule to be signed by the Manistique Pulp and Paper Company and our Department.

We look forward to working with you. If we can be of any further assistance or if you have any questions, please contact our office.

Sincerely,

Earle H. Olsen, R.S.  
Regional Supervisor  
Resource Recovery Division

By: Robert Schmeling II, P.E.  
Sanitary Engineer

lh

cc: Luce-Mackinac-Alger-Schoolcraft District Health Dept.  
F. Kellow

203 State Office Building  
Escanaba, Michigan 49829  
October 26, 1978

Mr. Leif Christensen  
Vice President-General Manager  
Manistique Pulp and Paper Company  
Manistique, Michigan 49854

Dear Mr. Christensen:

This is in reference to our October 4, 1978 meeting in your office concerning the company's sludge disposal site. Enclosed are the following items for your use:


1. Surety bond form
2. Application for license
3. Engineering design guidelines

As I stated during the meeting, these items will give you the tentative requirements that must be followed for the licensing of a solid waste disposal site. The results of the tests by Cory Laboratory of the solid waste and leachate samples will give us some parameters from which the final requirements for the disposal site can be determined. Also, would you send me a complete list of all materials that are contained in the barrels that are disposed of at the existing site.

Thank you for your cooperation. If you have any questions, please contact our office.

Sincerely,

Earle H. Olsen, R.S.  
Regional Supervisor  
Resource Recovery Division

By:   
Robert Schmeling II  
Sanitary Engineer

Th

encls.

cc: Luce-Mackinac-Alger-Schoolcraft District Health Dept.  
F. Kellow